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EASTERN DISTRICT OF TEXAS

KENNETH WAYNE THOMAS,	§	
Plaintiff,	8 8 8	
versus	§	CIVIL ACTION NO. 1:12-CV-423
RICHARD ALFORD, et al.,	§ §	
Defendants.	§	

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Kenneth Wayne Thomas, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983 against Richard Alford, Ina Broussard and David G. Pile.

The court previously referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this matter. The magistrate judge recommends this lawsuit be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation. The court must therefore conduct a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED.R.CIV.P. 72(b).

Title 28 U.S.C. § 1915(g) was enacted into law on April 26, 1996, and prevents prisoners who are not in imminent danger of serious physical harm from proceeding with lawsuits on an *in forma pauperis* basis if at least three of their prior cases or appeals were dismissed as frivolous, malicious or for failure to state a claim upon which relief may be granted. The magistrate judge concluded Section 1915(g) applied to this action because plaintiff previously filed at least three

cases that were dismissed as frivolous and one prior case that was dismissed for failure to state a

claim. Plaintiff asserts Section 1915(g) should not apply because some of his prior cases were

dismissed before Section 1915(g) was enacted into law. However, cases dismissed prior to the

date on which Section 1915(g) was enacted into law may be used to provide the basis for dismissal

of a case pursuant to Section 1915(g). Patton v. Jefferson Correctional Center, 136 F.3d 458, 462

(5th Cir. 1998) (citing Adepegba v. Hammons, 103 F.3d 383, 387 (5th Cir. 1996)). Plaintiff's

objections are therefore without merit.

ORDER

Accordingly, plaintiff's objections are OVERRULED. The findings of fact and

conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is

ADOPTED. A final judgment will be entered in this case in accordance with the magistrate

judge's recommendation.

SIGNED at Beaumont, Texas, this 2nd day of November, 2012.

MARCIA A. CRONE

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UNITED STATES DISTRICT JUDGE

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